UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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NEXT PROTEINS, INC., a California corporation,

Plaintiff(s),

SETTLEMENT CONFERENCE ORDER

-against-

CV 09-4534 (DRH) (ETB)

DISTINCT BEVERAGES, INC., a New York corporation; JAKE S. TOWNSON, an individual; NICK WOODHEAD, an individual; USA SPORTS SUPPLEMENTS, INC., a New York corporation; and DOES 1-20, inclusive,

Defendant(s).
--X

A settlement conference is scheduled before Magistrate Judge E. Thomas Boyle. All parties and their lead counsel are ORDERED TO APPEAR at the Alfonse M. D'Amato U.S. Courthouse, Federal Plaza, Courtroom 830, Central Islip, New York, on April 29, 2010 at 2:00 p.m.

SETTLEMENT CONFERENCE PREPARATION

Settlement preparation should be treated like trial preparation. The party who is best prepared obtains the best result.

A. FORMAT TO BE FOLLOWED

1. PRE-SETTLEMENT CONFERENCE DEMAND AND OFFER. Before the conference the parties shall, in writing, exchange their settlement proposals. More specifically, at least fourteen (14) days prior to the settlement conference, plaintiff's counsel shall submit a written itemization of damages and settlement demand to defendant's counsel with a brief explanation of why such a settlement is appropriate. No later than seven (7) days prior to the settlement conference, defendant's counsel shall submit a written offer to plaintiff's counsel with a brief explanation of why such a settlement is appropriate. This process may lead directly to a settlement. If not, plaintiff's counsel shall deliver copies of these letters to Judge Boyle's chambers no later than three (3) business days before the settlement conference. Do not file these in the Clerk's Office.

2. ATTENDANCE OF PARTIES REQUIRED. Parties with ultimate settlement authority must be personally present. An insured party shall appear by a representative of the insurer who is authorized to negotiate, and who has *authority to settle the matter up to the limits of the opposing parties' existing settlement demand*. An uninsured corporate party shall appear by a representative authorized to negotiate, and who has *authority to settle the matter up to the amount of the opposing parties' existing settlement demand or offer*. Having a client with authority available by telephone is *not* an acceptable alternative, without prior court approval. Two hours shall be allotted for the conference.

3. MEDIATION FORMAT. The Court will generally use a mediation format: opening presentations by each side followed by a joint discussion and private caucusing by the Court with each side. The Court expects both the lawyers and the party representatives to be fully prepared to participate. It is essential that the parties keep an open mind and to re-assess any previous positions in order to find creative means for resolving the dispute.

4. STATEMENTS INADMISSIBLE. Any statements made by any party or by counsel during the settlement conference are confidential and may not be used in litigation. Parties should, therefore, be frank and open in their discussions. The Court expects the parties to address each other with courtesy and respect.

5. SETTLEMENT LETTER. Each party shall submit to the court, under seal, a letter - not exceeding three (3) pages - discussing any liability and damages issues relevant to the settlement conference. This correspondence is for the court's use only in conducting the settlement conference. This correspondence shall be filed by fax directly with chambers (631-712-5715) one (1) day prior to the settlement conference.

B. ISSUES TO BE DISCUSSED AT SETTLEMENT CONFERENCE

Parties should be prepared to discuss the following at the settlement conference:

1. What are your objectives in the litigation?

2. What issues need to be resolved? What are the strengths and weaknesses of your case?

3. What are the points of agreement and disagreement between the parties? Factual? Legal?

4. What are the impediments to settlement?

5. What remedies are available through litigation or otherwise?

6. Are there possibilities for a creative resolution of the dispute?

7. Are there any outstanding liens? What is the amount? Should you include a representative of the lienholder?

C. INVOLVEMENT OF CLIENTS

Many clients have not previously participated in a Court-supervised settlement conference. Therefore, counsel shall provide a copy of this Order to the client and shall discuss the points contained herein with the client prior to the settlement conference.

SO ORDERED:

Dated: Central Islip, New York
April 5, 2010

/s/ E. Thomas Boyle
E. THOMAS BOYLE
United States Magistrate Judge